

Hearing Date December 16, 2014, 2:00 P.M.

Attorney for DEBTORS:
Peter A. Joseph (PJ9723)

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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In re

:

CHAPTER 7

CASE NO. 1-14-41062-cec

BRIAN C. LEIBA,

:

NOTICE OF MOTION
PURSUANT TO
11 U.S.C. §362(k)

Debtor and Joint Debtor. :

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PLEASE TAKE NOTICE: that on December 16 at 2:00 P.M., or as soon thereafter as counsel can be heard, a hearing will be held before the Honorable Carla E. Craog, at the United States Bankruptcy Court, Courtroom 3529, 271-C Cadman Plaza East, Brooklyn, N.Y., to consider the motion of the undersigned for costs and attorneys' fees pursuant to 11 U.S.C. §362(k).

Dated: New York, New York
November 22, 2014

S\ Peter A. Joseph
Peter A. Joseph (PJ9723)
Attorney for Debtors
177 Waverly Place, Suite 5F
New York, NY 10014-3552

To:

Icilda Vickers-Baker
198-16 118th Avenue
St. Albans, N.Y. 11412

John S. Pereira, Esq.
Chapter 7 Trustee
Pereira, Sinisi Llp
150 East 58th Street
New York, NY 10155-1400

United States Trustee
33 Whitehall Street
New York, NY 10004-2122

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

-----X	CHAPTER 7
In re	: CASE NO. 1-14-41062-cec
 BRIAN C. LEIBA,	 DECLARATION IN
	: SUPPORT OF MOTION
	: <u>PURSUANT TO 11 U.S.C. §362(k)</u>
Debtor.	:
-----X	

TO THE HONORABLE CARLA E. CRAIG
UNITED STATES BANKRUPTCY JUDGE

PETER A. JOSEPH, attorney for the debtor herein, pursuant to 28 U.S.C. § 1746,
declares as follows:

1. I am admitted to the bar of this Court and am the attorney for Debtor BRIAN C. LEIBA. I bring this motion pursuant to 11 U.S.C. §§362(k) for costs and attorneys' fees due to creditor ICILDA VICKERS-BAKER's violation of 11 U.S.C. § 362(a).

2. The Debtor filed a voluntary petition under 11 U.S.C. Chapter 7 on March 10, 2014. The Debtor was previously represented by Kevin Michael Castro. Mr. Castro obtained a series of adjournments prior to appearing with the Debtor at an 11 U.S.C. §341 meeting August 8, 2014.

3. While the Debtor was seated in the trustee hearing room, prior to the trustee's arrival, Mrs. BAKER and one of her daughters approached the Debtor, who was seated in the hearing room, and served him process in Queens Civil Court Index No. CV-01638-14/QU, *Baker, Icilda Vickers v. Leiba, Brian Christopher*, filed June 6, 2014.

4. The Debtor was seriously disturbed by this lawsuit, calling the undersigned several times in this regard, instructing me to write both Mrs. BAKER and the Civil Court respecting the 11 U.S.C. §362 stay, which the undersigned did September 22, 2014. This had no effect, and the undersigned was required to appear in the Civil Court Wednesday, November 19, 2014, to inform that Court of the pendency of this Case.

5. The September 22, 2014 letter to Mrs. BAKER, sent Certified Mail, Return Receipt Requested, was returned to the undersigned unclaimed. The address used, 198-16 118th Avenue, St. Albans, N.Y. 11412, is the same one given by Mrs. BAKER to both the Civil Court and this Court. See Exhibit "A" hereto (envelope with returned mail notice; Answer in Index No. CV-01638-14/QU).

6. Mrs. BAKER is listed as Creditor No. 8266635 in this Court's March 10, 2014 Notice Recipients for this Case (Doc. 4-7), and thus received this Court's Official Form 9A Notice, including the notice therein regarding "Creditors May Not Take Certain Actions."

7. There could be no clearer violation of 11 U.S.C. §362. *See In re Lansdale Family Restaurants, Inc.*, 977 F.2d 826, 829, Bankr. L. Rep. P 74,946 (3rd Cir. 1992):

“Willfulness does not require that the creditor intended to violate the automatic stay provision, rather it requires that the acts which violate the stay be intentional” (citations omitted)

Compare In re Johnson, 501 F.3d 1163, 1172 (10th Cir. 2007), Bankr. L. Rep. P 81,005 (surveying “willful” cases):

We . . . hold that in order to demonstrate a violation of § 362(k)(1), the debtor bears the burden of establishing, by a preponderance of the evidence, that the creditor knew of the automatic stay and intended the actions that constituted the violation; no specific intent is required.” (citations omitted)

WHEREFORE, the undersigned respectfully requests that this Court (i) determine that respondent ICILDA VICKERS-BAKER has violated 11 U.S.C. § 362; (ii) grant Debtor’s motion for costs and attorneys’ fees; and (iii) grant such other and further relief as is just and proper herein.

Dated: New York, New York
November 22, 2014

/s/ Peter A. Joseph, Esq. PJ9723
177 Waverly Place, Suite 5F
New York, N.Y. 10014-3552
(212) 924-1498

Law Offices of Peter A. Joseph
177 Waverly Place, Apt. 5F
New York, NY 10014-3552

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Icilda Vickers Baker
198-16 118th Avenue
St. Albans, N.Y. 11412

FINAL NOTICE

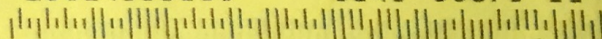
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Civil Court of the City of New York
County of Queens

Index No: CV-016368-14/QU



ANSWER IN WRITING
ACTION FOR MONEY ONLY

ICILDA VICKERS BAKER
 -against-
 BRIAN CHRISTOPHER LEIBA

Defendant, BRIAN CHRISTOPHER LEIBA, at 119-33 201ST STREET, Saint Albans, NY 11412 answers the complaint as follows:

ANSWER: (Check all that apply) Dated : 07/21/2014

1 ☐ General Denial: I deny the allegations in the complaint

SERVICE

2 ☐ I did not receive a copy of the summons and complaint

3 ☐ I received the Summons and Complaint, but service was not correct as required by law.

DEFENSES

4 ☐ I do not owe this debt.

5 ☐ I did not incur this debt. I am the victim of identity theft or mistaken identity.

6 ☐ I have paid all or part of the alleged debt.

7 ☐ I dispute the amount of the debt.

8 ☐ Plaintiff is required to be licensed by the department of consumer affairs of the City of New York and does not allege a license number in the Complaint.

9 ☐ Statute of Limitations (the time has passed to sue on this debt).

10 ☐ The debt has been discharged in bankruptcy.

11 ☐ The collateral (property) was not sold at a commercially reasonable price.

12 ☐ Unjust enrichment (the amount demanded is excessive compared with the original debt.)

13 ☐ Violation of the duty of good faith and fair dealing.

14 ☐ Unconscionability (the contract is unfair.)

15 ☐ Laches (plaintiff has excessively delayed in bringing this lawsuit to my disadvantage.)

16 ☐ Defendant is in the military.

17 ☐ Other: _____

OTHER

18 ☐ Please take notice that my only source of income is _____, which is exempt from collection.

COUNTERCLAIM

19 ☐ Counterclaim(s):\$ _____ Reason: _____

VERIFICATION-State of New York, County of Queens ss:

BRIAN CHRISTOPHER LEIBA, being duly sworn, deposes and says: I am the Defendant in this proceeding. I have read the Answer in Writing Consumer Credit Transaction and know the contents thereof to be true to my own knowledge except as to those matters stated on information and belief, and as to those matters I believe them to be true.

sworn to before me this _____ day of _____ 20____

 Defendant

Notary Public /Court Employee and Title

this case is scheduled to appear on: Date: _____ Part: _____ Room: _____ Time: _____

ICILDA VICKERS BAKER
 198-16 118TH AVENUE
 Saint Albans, NY 11412